

**KENTUCKY PERSONNEL BOARD
MINUTES OF JANUARY 11, 2008**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on January 11, 2008, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman
Betty Gibson, Member
Lisa T. Hendricks, Member
Rosemary F. Center, Member
Jackson M. Andrews, Member
Robert B. Frazer, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board personnel not present:

Christine J. Goodmann, Vice-Chairman

2. **READING OF THE MINUTES OF REGULAR MEETING HELD DECEMBER 14, 2007**

The minutes of the last Board meeting had been circulated among the members previously. Chairman Higgins asked for additions or corrections. Ms. Gibson moved to approve the minutes as submitted, Mr. Andrews seconded, and the motion carried 5-0 (Chairman Higgins does not vote unless noted). The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek reported that \$65,000 has been cut from the Personnel Board's budget; therefore, the part-time attorney position will not be filled at this time. Mr. Sipek further stated that the Personnel Board is still considering moving to 1 Fountain Place, unless the costs are too substantial.

Mr. Sipek updated the Board members on the following Franklin Circuit Court appeals:

- Transportation v. Michael Duncan, 07-CI-876– An Agreed Order was entered settling the appeal.
- Finance Cabinet v. Jennifer Harrod, 07-CI-23 -The Court entered an opinion affirming the Personnel Board's Order.

- Personnel Board v. Health and Family Services & Lowell Workman, 07-CI-1556 - The court denied Workman's request to be placed directly in the position.
- Education Cabinet v. Brenda Hendrix, 06-CI-1130 – The Court granted leave time and travel expenses.
- Kenneth Tramontin v. Health and Family Services, 05-CI-1131– The Court entered an opinion affirming the Personnel Board's Order.
- Finance Cabinet v. David Waller & Personnel Board, 07-CA-2512– The Court ruled that the appeal will go forward at the Board level.

Mr. Sipek reported that IKON has finished scanning the Board's previous decisions. These decisions should be available on Westlaw this coming spring.

At the conclusion of Mr. Sipek's report, Chairman Higgins asked if there were any questions. With no questions presented, he asked for the Personnel Cabinet's report.

4. **PERSONNEL CABINET'S REPORT**

Secretary Nikki Jackson and the Hon. Dan Egbers, Executive Director for Legal Services, were present for the Personnel Cabinet and reported the following:

Mr. Egbers introduced the new Personnel Cabinet Secretary, Nikki Jackson, to the Board members. Secretary Jackson greeted the Board members and advised them of the priorities of the Cabinet.

- The successful implementation of the Kentucky Human Resources Information System (KHRIS).
- Pro-active monitoring and implementing of employees' Benefits Service Packaging. Focus on employees' expectations and concerns and at the same time balance fiscal responsibilities.
- Restoration of "Faith, hope and integrity." Restore employees' "trust."

Secretary Jackson encouraged the Board to hold the Cabinet accountable.

Mr. Egbers advised that he planned to meet with Representative Cherry concerning written reprimands. He also asked if there were any questions concerning the proposed change to 101 KAR 1:335 [Written comments dated December 27, 2007 received from Dan Egbers, Personnel Cabinet]. After some discussion, the Board members agreed to accept Mr. Egbers' comments with exception to the language of Section 6(1)(b)(2), which is to be revised by Mr. Sipek.

Mr. Andrews moved to accept the changes to 101 KAR 1:335 as amended. Ms. Gibson seconded and the motion carried 5-0.

Chairman Higgins welcomed Secretary Jackson and stated that the Board looks forward to working with her. Mr. Andrews, as well, welcomed Secretary Jackson. Mr. Andrews further stated that it was his observation – during his one year with the Board – that there are many appeals of the Board’s orders, initiated by state agencies, before the Franklin Circuit Court and the Court of Appeals. He advised that the Board’s orders are rarely reversed. He informed Secretary Jackson that an enormous amount of public resources go towards these appeals. For example, when an agency loses, public resources are used to pay the employee’s attorney’s fees. Mr. Andrews advised that in his judgment there should be a better system of coordinating agency decisions to appeal the Personnel Board’s orders. Secretary Jackson thanked Mr. Andrews for the suggestion. Mr. Egbers advised that he would work closely with other agencies and advise them that his office is available for advice or counsel concerning which “battles to fight” and hoped to have a unified approach.

Upon conclusion of the Personnel Cabinet’s report, Secretary Jackson personally introduced herself to the Board members and staff.

5. ORAL ARGUMENTS

A. Jerry Briscoe and Eddie Roberts v. Finance and Administration Cabinet (ON REMAND)

Present were the Hon. Celia Dunlap, counsel for the Appellee, who had requested oral arguments; and the Hon. Paul Fauri, co-counsel for Appellants. The parties answered questions from the Board.

B. ~~Campbell, et al. v. Environmental and Public Protection Cabinet and Personnel Cabinet~~ (Request by both Appellees) **Settlement Pending – Discussion Ongoing – Moved to February.**

C. Lisa Taylor v. Public Service Commission

Present were the Hon. Iris Skidmore, counsel for the Appellant, who had requested oral arguments; and the Hon. Ed Logan, counsel for the Appellee. The parties answered questions from the Board.

6. REQUESTS FOR INVESTIGATION

Following oral arguments, Chairman Higgins advised that requests for investigations will be discussed out of Agenda order. Before discussing requests for investigation, Ms. Hendricks moved to take a 15-minute recess. Mr. Andrews seconded and the motion carried 5-0 (11:10 a.m.). The meeting reconvened at 11:25 a.m.

A. Appointment of Michael Bates by the Office of the Treasurer
(Deferred from December 2007)

Present was the Hon. Dan Egbers. Mr. Egbers advised that he looked through the materials concerning Mr. Bates' appointment and whether Mr. Bates had received favorable treatment. Mr. Bates tested numerous times for the position and finally got in the top five. He stated that Bates was appointed to a Production Technician I (low level) position in October 2006. The complaint was initiated by an anonymous source and former Secretary Crall referred it to the Board. Mr. Egbers stated that he did not see any indication of pre-selection. However, he did observe the following:

- Equitable estoppel – The law permitted numerous testing. The law allowed that a register be returned and another one issued. All these actions were approved by the Personnel Cabinet.
- Mootness – A different register process is now in place, the Career Opportunity System (COS). Further, Mr. Bates has been promoted to another position (Administrative Securities Technician) in a different classification.

Mr. Egbers concluded that if something wrong happened, it was neither Mr. Bates' fault nor anything done inappropriately by the Treasurer's Office. Chairman Higgins asked if the payroll would be decertified if the Personnel Board declined to investigate. Mr. Egbers said no and that as far as he knows that action has never been invoked; however, it has been used as a threat.

Mr. Andrews moved to decline to investigate. Chairman Higgins seconded and the motion carried 4-1 (with Chairman Higgins voting), with Mr. Frazer opposing and Ms. Hendricks abstaining.

B. 2004 Salary Adjustment of Rebecca Brooke Parker by the Office of the Treasurer
(Deferred from December 2007)
-- Letter from Dan Egbers

Present was the Hon. Dan Egbers. Mr. Egbers hoped the Board members had a chance to review his letter to Treasurer Todd Hollenbach. Mr. Egbers stated that he has reviewed the request for investigation of Ms. Parker receiving two salary adjustments in 2004. He cannot tell why they were approved that way; however, at that time protocol did not require written justification to request a generic salary adjustment for an unclassified employee, which has now been changed. He stated that the two salary adjustments could have been combined as an Adjustment for Continuing Excellence (ACE) award, which Ms. Parker would have qualified for. It is Mr. Egbers understanding that Ms. Parker had taken on duties beyond her assigned classification. Mr. Egbers stated that an ACE award is an appropriate resolution to correct the error. He further stated that Ms. Parker is an unclassified employee, which the Board does not ordinarily exercise jurisdiction over. For that reason, there is no viable purpose for the Board to

investigate this matter and, therefore, the Personnel Cabinet withdraws its request. Mr. Egbers then answered questions from the Board members.

Mr. Andrews moved to decline to investigate. Ms. Hendricks seconded and the motion carried 4-1 (with Chairman Higgins voting), with Mr. Frazer opposing and Ms. Center abstaining.

C. Michael Duncan Hiring Investigation (2007-06)

--Letter from Dan Egbers

Mr. Sipek advised that the Personnel Board is already involved in the Duncan investigation. It is on the Board's agenda today pursuant to a conversation Mr. Sipek had with Mr. Egbers and correspondence which has been provided to the Board. Mr. Sipek stated that a hearing was to be conducted with the parties. Personnel Cabinet staff [from the previous administration] believed the hiring of Duncan to be improper. The Hon. Paul Fauri and the Hon. Thomas Clay were going to represent Mr. Duncan and Mr. David Ray (the person responsible for filling the position), who felt that the hiring was done properly.

Mr. Egbers stated that upon assuming his position at the Personnel Cabinet as Executive Director of Legal Services, Duncan was one of the first files he looked at. He also found out that the parties had arrived at a settlement agreement and obtained a copy of it. Mr. Egbers reviewed the terms of the settlement, and one of the terms was that the Transportation Cabinet would no longer pursue its appeal at the Franklin Circuit Court. He reminded the Board members that Hearing Officer John Ryan, in his Recommended Order, determined that no impropriety was found in the hiring of Duncan. Mr. Egbers stated that on the day the Board voted on the Recommended Order, Secretary Crall presented a request for an investigation in the hiring of Duncan. Through his conversations with Mr. Sipek, Mr. Egbers stated that essentially the Personnel Cabinet would act as a prosecutor if the investigation went forward. However, the canons of legal ethics did not permit a state attorney to take advantage of a superior economic position, unless there is a viable argument to make. Mr. Egbers advised that he has no viable argument to make. Pursuant to the Hearing Officer's Recommended Order and the Board's Final Order, the hiring of Duncan was appropriate. Because the appeal has been resolved further by settlement agreement, that ends the request for investigation, in Mr. Egbers' opinion.

Ms. Hendricks asked Mr. Sipek if he had an opinion. Mr. Sipek stated that in his opinion the investigation does not end unless the Board wants it to end. Mr. Sipek stated there was an appeal years ago involving the Transportation Cabinet and the ultimate resolution of that appeal was to refer it back for an investigation. Mr. Sipek stated that although he does not disagree with Mr. Egbers' conclusion, he disagrees that the settlement ends the investigation. The question is whether the Board wants to investigate and in what manner. Mr. Egbers concluded that once the Transportation Cabinet agreed to settle (according to Mr. Andrews paying almost \$400,000 of taxpayers' money), that leaves the Board's Order the law of the case. After further discussion among the members a motion was made.

Mr. Andrews moved to decline to investigate. Mr. Frazer seconded and the motion carried 5-0 (with Chairman Higgins voting), with Ms. Hendricks abstaining.

7. CLOSED SESSION

Ms. Hendricks moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Mr. Andrews seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (12:25 p.m.)

Ms. Hendricks moved to return to open session, Ms. Gibson seconded, and the motion carried 5-0. (2:02 p.m.)

8. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Brenda Hendrix v. Education Cabinet
(DEFERRED FROM DECEMBER)

Ms. Hendricks moved to note Appellee's exceptions, Appellant's exceptions and response and oral arguments and to accept the Final Order as altered and attached to these minutes sustaining the appeal. Ms. Gibson seconded and the motion carried 5-0.

B. Jerry Briscoe and Eddie Roberts v. Finance and Administration Cabinet (ON REMAND)

Ms. Center moved to note Appellee's exceptions, Appellants' response and oral arguments and to accept the Hearing Officer's Recommended Order and Supplemental Report and Recommended Order sustaining the appeal. Mr. Andrews seconded and the motion carried 4-1, with Mr. Frazer opposing.

C. Campbell, et al. v. Environmental and Public Protection Cabinet and Personnel
—Cabinet (pay equity, mine safety positions—appeals sustained)

- D. Lisa Taylor v. Public Service Commission (Chairman Higgins recused himself from discussion and consideration of this appeal).

Mr. Frazer moved to note Appellant's exceptions, Appellee's response and oral arguments and to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 4-0, with Ms. Gibson abstaining.

- E. Laura Ferguson v. Finance and Administration Cabinet

Ms. Hendricks moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 5-0.

- F. Leslie Saunders v. Finance and Administration Cabinet

Ms. Hendricks moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

- G. Meho Basic v. Transportation Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

- H. Charles Clement v. Cabinet for Health and Family Services

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 5-0.

- I. Deborah Harbaugh v. Justice and Public Safety Cabinet

Ms. Center moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

- J. Michelle Havens v. Justice and Public Safety Cabinet

Ms. Gibson moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

- K. George Irvin v. Justice and Public Safety Cabinet and Samantha Tucker, Intervenor – 2 appeals

Ms. Hendricks moved to accept the recommended order dismissing the appeals. Ms. Center seconded and the motion carried 5-0.

L. Dean Loy v. Transportation Cabinet and Eric R. Monhollon

Ms. Gibson moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

M. Cecilia Turley v. Justice and Public Safety Cabinet

Mr. Hendricks moved to defer this matter to the next meeting of the Board. Ms. Gibson seconded and the motion carried 5-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had show cause orders entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

- N. Bader Ali v. Personnel Cabinet
- O. Dawn Chenault v. Personnel Cabinet
- P. Julius Cowart v. Personnel Cabinet
- Q. Walter Ivey v. Personnel Cabinet (2 appeals)
- R. Jeffrey Johnson v. Personnel Cabinet
- S. James Manico v. Personnel Cabinet
- T. Stephen Rose v. Cabinet for Health and Family Services
- U. Walt Wexler v. Personnel Cabinet
- V. Richard Wilson IV v. Personnel Cabinet

Ms. Center moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Ms. Hendricks seconded and the motion carried 5-0.

9. **WITHDRAWALS**

Mr. Frazer moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Andrews seconded and the motion carried 5-0.

- A. Duane Christian v. Justice and Public Safety Cabinet
- B. Michael McGuire v. Transportation Cabinet
- C. Keith Taylor v. Personnel Cabinet
- D. Kenneth Wuetcher v. Personnel Cabinet
- E. Lonnie Stevenson v. Environmental and Public Protection Cabinet

10. SETTLEMENTS

Ms. Gibson moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Ms. Center seconded and the motion carried 5-0.

- A. Mary Baldrige v. Commerce Cabinet
- B. Darryl Hopson v. Justice and Public Safety Cabinet
- C. Rita Partin v. Commerce Cabinet
- D. Hugh E. Wall IV v. Justice and Public Safety Cabinet
- E. Lydia Eldridge v. Cabinet for Health and Family Services
- F. Jerry Gregory v. Justice and Public Safety Cabinet
- G. Reza Youssefi v. Transportation Cabinet

11. OTHER

Ms. Hendricks wanted the record to reflect a concern she had regarding the Justice and Public Safety Cabinet case (Michelle Havens) that was decided today. She was concerned that the Agency would bring in a wrestling program into a prison facility. Chairman Higgins agreed and hoped the Board's decision will send a message. The Board does not endorse what the Agency did. Mr. Andrews wanted to send something to the Agency. Chairman Higgins stated that a wrestling program incites a group of clients/inmates that are already high-risk. Mr. Andrews stated that it was also a waste of public resources. It was Mr. Frazer's opinion that the Board lacked authority over the Agency, that the Board handles employee issues, which should be the extent of the Board's involvement. However, Mr. Sipek stated that the Agency has the discretion to either follow or ignore the Board's concern. Chairman Higgins stated that the Agency may welcome the Board's guidance. Mr. Andrews wanted the record to reflect that there was "disapprobation" among the Board members concerning the Agency's judgment by providing wrestlers as entertainment. Ms. Gibson stated that it would at least give them something to think about. Ms. Hendricks felt that since the Agency invited the Board members to tour its facilities that they seemed to want the Board's understanding. Chairman Higgins stated that the record should reflect the Board's discussion.

There being no further business, Ms. Hendricks moved to adjourn. Ms. Center seconded, and the motion carried 5-0. (2:14 p.m.)

Greg Higgins, Chairman

Christine J. Goodmann, Vice-Chairman

Betty Gibson, Member

Lisa T. Hendricks, Member

Rosemary F. Center, Member

Jackson M. Andrews, Member

Robert B. Frazer, Member